IN THE UNITED STATES SUPREME COURT.

OCTOBER TERM, 1904.

NO. 196.

J. B. CARO, J. C. KEYSER, ET AL,
PLAINTIFFS IN ERROR.

vs.

W. H. DAVIDSON, W. E. ANDERSON, ET AL,
DEFENDANTS IN ERROR.

On Motion to Dismiss for Want of Jurisdiction.

Brief of WILLIAM A. BLOUNT and A. C. BLOUNT, JR., Attorneys for Defendants in Error.

The record fails to show any jurisdiction in this Court. No question which it is entitled to review was presented to, or decided by the Supreme Court of Florida.

The petition of the Plaintiffs in error before the Circuit Judge (Transcript pages 3 to 5) was to set aside a final decree of the same Court in a Chancery cause (Transcript, pages 5 to 8) on the ground that the Judge (J. F. McClellan) who made the decree, was the brother-in-law of one of the complainants (C. C. Yonge, senior) in whose favor the decree was rendered, and hence that under the Statutes of Florida (Rev. Stat. p. 970), the claim was void.

The answer (Transcript page 13) of the defendants in error to this petition relied upon two grounds of defense, namely:

"That the final decree made in said cause was appealed by the petitioners (Plaintiffs in error here) to the Supreme Court of the State of Florida, and there examined upon its merits, and a decree rendered by the Supreme Court affirming the final decree of the said J. F. McClellan." (For

this decision of the Supreme Court see Wilkins vs. Davidson, 36 Fla. 36.)

That "more than ten years prior to the bringing of this suit the wife of the said J. F. McClellan, the sister of the said C. C. Yonge, Senior, had died"

Only two questions were thus presented:

Whether assuming that the decree in Chancery, rendered by a disqualified Circuit Judge, was void, such decree was not merged in a decree of the Supreme Court made by Judges therein not disqualified, and after the examination of the merits by them; and

Whether since the wife of J. F. McClellan, Judge, and the sister of C. C. Yonge, Senior, a complainant in whose favor the decree was rendered, had died before the bringing of the suit, and hence before the decree alleged to be void, her death did not dissolve the connection between them, and thus avoid the disqualification.

The defendants in error demurred to this answer (Transcript page 13) and the matter being argued, the petition was denied, (Transcript page 14).

The assignment of error by plaintiffs in error in the Supreme Court of Florida was only that the Circuit Court erred in denying the petition (Transcript page 2).

The Supreme Court affirmed the decree of the Court below, but delivered no opinion (Transcript page 19). It will thus be seen that there were only the two questions heretofore mentioned before the Circuit Court and the Supreme Court of Florida, and the latter merely passed upon the effect of the statute of the State of Florida (Revised Statutes, Sec. 970), under the circumstances set out in the petition.

The Court had strong reason based upon authority for this holding, for many cases hold that an appeal from the Circuit Court in Chancery to the Supreme Court, vacates the decree below, and the Supreme Court deals with the case as a new one.

So. Life, etc., vs. Cole, 4 Fla., 359;
Smith & Armistead vs. Croom, 7 Fla., 180;
State vs. J. P. & M., etc., 15 Fla., 201, 260;
O'Neil vs. Percival, 25 Fla., 118;
Foster vs. Ambler, 24 Fla., 770;
Neubert vs. Massman, 37 Fla., 91;
39 Fla., 280.

And hence this decree, although pronounced by a disqualified Judge in the Court below, became, upon re-examination on the merits by the Supreme Court, a decree of that Court.

The Court also had authority and reason for holding that Mrs. McClellan having died, and she being the only link furnishing a relationship between the Judge and the litigant before him, that relationship upon her death, ceased, and a decree rendered thereafter would not be void because of relationship within prohibited degrees.

Winchester vs. Hinsdale, 12 Conn., 93;
Yerby vs. Martin, 38 S. W. Rep., 541;
Cain vs. Ingam, 7 Cowen, 478.

It is entirely immaterial, however, whether the Supreme Court of Florida was right or wrong, so long as no federal question was involved, and decided by it.

The plaintiffs in error, however, seem to find a federal question in the assumption that the Supreme Court of Florida necessarily decided that the decree of Judge McClellan was invalid until the passage of the Act of 1901 (Chap. 4902, Laws of Fla , Session Acts, page 39) and that it was valid only because validated by that act. We assume that no well informed lawyer would claim that a void final judgment could be validated by subsequent action of the Legislature. Whether it would be void because in conflict with the Federal Constitution, or because in contravention of the division of powers among the departments of the State Government by the State Constitution, is a question we need not discuss, for it does not necessarily arise in this case.

Without such discussion there are several answers to the contention of the plaintiffs in error.

1. That the Act of 1901 is not to be found adverted to in the record, and cannot for the purposes of the jurisdiction of this Court be imported into it.

Powell vs. Brunswick County, 150, U S. 640.

2. That no "definite issue as to the validity of the statute * * * * * is distinctly deducible from the record before the State Court," so as to present a Federal question.

Ibid.

3. That if the decision of the State Court could have been made without deciding upon the validity of the statute, this Court has no jurisdiction.

McQuade vs. Trenton 172 U. S 640;
Hammond vs. Johnson 142 U. S. 73.

4. That no decision of the State Court in favor of the validity of the statute is on the record.

Dibble vs. Bellingham, etc., 163 U. S. 71.

The necessity for the assertion of the claim on the record and the principles which govern the Court in requiring that the record shall show jurisdiction, are so well settled by the repeated decisions of this Court, that it is unnecessary to make further citations.

Respectfully submitted,

WM. A. BLOUNT,
A. C. BLOUNT, JR.,
Attorneys for the Defendants in Error.
The Movants Herein.